

#216

1 JOHN G. PETERSON  
2 Peterson and Brynan  
3 8530 Wilshire Boulevard, Ste. 407  
4 Beverly Hills, California 90211  
5 (213) 659-9965

A 241

and

6 ROBERT N. HARRIS  
7 The Oviatt Building  
8 617 South Olive Street, Ste. 915  
9 Los Angeles, California 90014  
10 (213) 626-3271

FILED: 6/11/84

Attorneys for Plaintiff

11 BARRETT S. LITT  
12 MICHAEL S. MAGNUSON  
13 The Law Offices of LITT & STORMER  
14 3550 Wilshire Boulevard, Ste. 1200  
15 Los Angeles, California 90010  
16 (213) 386-4303

Attorneys for Intervenor

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF LOS ANGELES

19 CHURCH OF SCIENTOLOGY OF	)	NO. C 420153
20 CALIFORNIA,	)	
	)	MOTION FOR ORDER
21 Plaintiff,	)	SEALING DOCUMENTS
	)	PENDING APPEAL;
22 vs.	)	MEMORANDUM OF LAW
	)	
23 GERALD ARMSTRONG,	)	
	)	
24 Defendants.	)	
	)	
25 MARY SUE HUBBARD,	)	
	)	
26 Intervenor.	)	
	)	

27 Plaintiff and Intervenor hereby move this court for  
28 an order placing under seal all documents admitted into evidence  
or marked for identification in this case which were among the  
materials returned to the custody of the court by Michael and  
Flynn and Contos and Bunch and which have, heretofore, been

A 242

1 maintained under seal by the clerk of this court. This sealing  
2 order would remain in effect pending outcome of any appeal taken  
3 in the case.

4 This motion is based on the memorandum of law attached  
5 hereto and on the motions previously submitted in support of a  
6 sealing order.

7  
8 DATED: June \_\_, 1984

Respectfully submitted,

9 ROBERT N. HARRIS  
10 Attorney for Plaintiff

11 BARRETT S. LITT  
12 LITT & STORMER  
13 Attorney for Intervenor

14 By \_\_\_\_\_  
15 BARRETT S. LITT  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 JOHN G. PETERSON  
2 Peterson and Brynan  
3 8530 Wilshire Boulevard, Ste. 407  
4 Beverly Hills, California 90211  
5 (213) 659-9965

A 2437

and

6 ROBERT N. HARRIS  
7 The Oviatt Building  
8 617 South Olive Street, Ste. 915  
9 Los Angeles, California 90014  
10 (213) 626-3271

Attorneys for Plaintiff

11 BARRETT S. LITT  
12 MICHAEL S. MAGNUSON  
13 The Law Offices of LITT & STORMER  
14 3550 Wilshire Boulevard, Ste. 1200  
15 Los Angeles, California 90010  
16 (213) 386-4303

Attorneys for Intervenor

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF LOS ANGELES

19 CHURCH OF SCIENTOLOGY OF ) NO. C 420153  
20 CALIFORNIA, )  
21 Plaintiff, ) MEMORANDUM OF LAW  
22 vs. ) IN SUPPORT OF MOTION  
23 ) FOR SEALING PENDING  
24 ) APPEAL  
25 )  
26 GERALD ARMSTRONG, )  
27 )  
28 )  
29 Defendants. )  
30 )  
31 MARY SUE HUBBARD, )  
32 )  
33 )  
34 Intervenor. )  
35 )  
36 )  
37 )  
38 )

INTRODUCTION

During the trial herein the Court has permitted many of the documents, which are the subject of this action and which

//



1 have been maintained under seal, to be received into evidence  
2 not under seal.

3 Plaintiffs anticipate that regardless of the outcome  
4 of the case before this Court, there will be an appeal. The  
5 purpose of the instant motion is to seek an order placing under  
6 seal all previously sealed "archives" documents pending the  
7 determination of the anticipated appeal.

8 Plaintiffs' basic argument on this motion is that  
9 while the anticipated appeal is pending unless the documents  
10 are under seal the privacy rights of Plaintiffs will be  
11 violated. It is noteworthy that this will occur regardless of  
12 the outcome of the appeal because once the public and/or the  
13 press gain access to the documents, as will occur during the  
14 pendency of the appeal, absent a sealing the harm from the  
15 invasion of privacy cannot be "undone" by any subsequent  
16 ruling. In other words, once the public or press gain access  
17 to the documents, as a practical matter the "cat is out of the  
18 bag" and no court can "unring the bell." (See Chief Justice  
19 Burger's opinion in Maness v. Meyers, 419 U.S. 440, 463 (1975).  
20

21 ARGUMENT

22  
23 The California Courts have shown great deference to  
24 privacy rights such as those involved in the instant case. In  
25 the discovery context protective orders routinely issue to pro-  
26 hibit invasions of privacy. Indeed, it has been recognized  
27 that where personal information is relevant to the subject mat-  
28

1 ter of a claim and is therefore produced through discovery, the  
2 party is, upon motion, presumptively entitled to a protective  
3 order that the information need be revealed only to counsel for  
4 the opposing party and that once so revealed the information  
5 may be used only for purposes of the lawsuit. See Richards  
6 v. Superior Court for Los Angeles County (1978) 86 Cal.App.3d  
7 265.

8 In Willis v. Superior Court of Los Angeles County  
9 (1980) 112 Cal.App.3d 277, 297, the court reasserted the  
10 familiar proposition that:

11  
12 "[T]here exist zones of privacy covering sensitive  
13 areas of personal information in which the scope of  
14 discovery may be diminished or qualified by a protec-  
15 tive order fashioned to accommodate the competing  
16 values of the individual rights and privacy  
17 and...important state interests of facilitating the  
18 ascertainment of truth in legal proceedings."  
19

20 The order sought in the instant case, in the context  
21 of an appeal, is akin to the protective orders which issue  
22 routinely in a discovery context. The similarity of the order  
23 sought herein to protective orders is particularly strong  
24 because in both contexts the ability of the litigants to  
25 conduct their case is not affected by the order, yet the  
26 privacy interests are protected.  
27

28 The approach sought by Plaintiffs herein also is  
entirely consistent with the courts' protection of other kinds



of secret or private information. As a general matter in California, "the sittings of every court shall be public." Cal. Code of Civ. Proc., Sec. 124. The provisions of Section 124, however, have been held to be subordinate to "the higher right and duty of the court under the Constitution."

Kirstowsky v. Superior Court (1956) 143 Cal.App.2d 745, 753. Relying on Kirstowsky, the California Supreme Court has held that a trial court may "close portions of the trial to the public" when there is good cause based upon the protection of parties or upon the interests of justice. People v. Cash (1959) 52 Cal.2d 841, 846.

In camera proceedings also have been regarded as appropriate to protect the identity of informants in criminal trials. Indeed, Cal. Evidence Code, Section 1042(d) prescribes a procedure for hearings which seek the disclosure of the identity of an informant on the grounds that the informant is a material witness. The procedure specifically provides for in camera proceedings whenever the evidence adduced in the hearing itself would tend to reveal the informant's identity. See also People v. Kirkland (1980), 28 Cal.3d 376, 394 n.11 (in camera hearing convened to resolve invocation of informant-nondisclosure privilege).

It also has long been recognized, particularly in the criminal context, that where testimony involves confidential information, or highly embarrassing or sensitive issues, the public may be excluded from the courtroom. See, e.g., Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980); Kirstowski v. Superior Court (1956) 143 Cal.App.2d 745.

1 Underlying all of these cases is the proposition that  
2 the right to public access to evidence adduced in the course of  
3 a lawsuit is not absolute. The interests of justice and  
4 constitutional protections like the right of privacy outweigh  
5 the statutory right to public trials. Whether the disclosure  
6 be of private and personal information, or of trade secrets or  
7 the identity of an informant, the availability of the courts  
8 and the administration of justice requires and provides for the  
9 evidence to be placed under seal.

10 The unique character of a disclosure of private or  
11 secret information has been recognized in the variety of  
12 sealing cases in a variety of situations. The United States  
13 Supreme Court has held in Maness v. Meyers, 419 U.S. 440, 460-  
14 463 (1975) that this unique character of a disclosure, when it  
15 involves constitutionally-protected rights, requires an  
16 appellate procedure that permits an appeal before the disclosu-  
17 re. In Maness, the trial court had ordered that a witness in  
18 civil trial must produce material even though the witness'  
19 lawyer believed in good faith that the material might tend to  
20 incriminate his client. Chief Justice Warren Burger  
21 acknowledged the general rule that an order must be complied  
22 with and then later challenged by an appeal, but held that this  
23 approach must be altered where the order required a disclosure  
24 of constitutionally-protected information. He stated as  
25 follows:

26  
27  
28 "When a court during a trial orders a witness to  
29 reveal information, however, a different situation



1 may be presented. Compliance could cause irreparable  
2 injury because appellate courts cannot always "unring  
3 the bell" once information has been released. Sub-  
4 sequent appellate vindication does not necessarily  
5 have its ordinary consequence of totally repairing  
6 the error.

7 \* \* \*

8 "Here . . . petitioner's client has not yet delivered  
9 the subpoenaed material, and he consistently and vig-  
10 orously asserted his privilege. Here, the 'cat' was  
11 not yet 'out of the bag' and reliance upon a later  
12 objection or motion to suppress would 'let the cat  
13 out' with no assurance whatever of putting it back."  
14 (Emphasis added.) 419 U.S. at 460, 463.

15  
16 Plaintiffs already have had an experience where the  
17 "cat was let out of the bag" and in that case it was impossible  
18 to "unring the bell." In United States v. Hubbard, 650 F.2d  
19 293 (D.C. Cir. 1981) the Circuit Court reversed an unsealing  
20 order for documents obtained by the government in a search of  
21 Church premises. In subsequent proceedings. Plaintiff Church  
22 sought to have the copies of these documents, obtained by third  
23 parties during the nine-months the documents had remained as  
24 unsealed public records, returned to the Court. The Court of  
25 Appeals ruled that it was impossible to undue the harm caused  
26 by the temporary unsealing, stating as follows:  
27  
28



1 "Scientology fears that without additional protection  
2 from this court, private persons who have obtained  
3 copies of the documents while they were improperly  
4 unsealed will be free to use them as they please  
5 without judicial oversight of the kind involved in  
6 the course of ordinary discovery procedures. The  
7 additional protection sought is general, i.e.,  
8 requiring return of all copies, enjoining their  
9 future use, and making the sealing order effective  
10 nunc pro tunc back to the time of the improper  
11 unsealing. \* \* \* [T]he general prohibition  
12 Scientology seeks here however would apply to  
13 unidentified non-litigants who acted in good faith in  
14 obtaining the documents and whose actions would now  
15 be governed by an order they had no meaningful  
16 opportunity to contest. Any such general prohibition  
17 would not only extend the court's mandate to  
18 unknowable limits but would realistically be unen-  
19 forceable as well." (Emphasis added.) 686 F.2d at  
20 956-57 n.4.

21  
22 The D.C. Circuit later considered another appeal of a  
23 District Court order permitting a further disclosure of the  
24 documents that had again been placed under seal. It is signi-  
25 ficant that this time the Court of Appeals granted a request  
26 for an emergency stay of these further disclosures pending the  
27 appeal. 686 F.2d at 959. In short, the Court of Appeals was  
28 well aware of the irreparable nature that any temporary unseal-

1 ing pending appeal would cause. It is respectfully suggested  
2 that the same situation is before this Court on the instant  
3 motion.

4 CONCLUSION

5  
6 This Court has before it documents of a highly  
7 personal and private nature. The Plaintiffs' request by way of  
8 the instant motion seeks to preserve and protect the privacy  
9 interest of Plaintiffs in those documents, but in no way would  
10 impinge upon any legitimate interests of the Defendants. The  
11 case law cited above shows the appropriateness of the sealing  
12 order sought. It is respectfully suggested that under these  
13 factual and legal circumstances, the instant motion should be  
14 granted.

15  
16 DATED: June \_\_, 1984

Respectfully submitted,

17 ROBERT N. HARRIS  
18 Attorney for Plaintiff

19 BARRETT S. LITT  
20 LITT & STORMER  
21 Attorney for Intervenor

22 By \_\_\_\_\_  
23 BARRETT S. LITT  
24  
25  
26  
27  
28